

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

CITY OF GREENWOOD, MISSOURI,

Respondent

v.

MARTIN MARIETTA MARTEIRIALS, INC. AND  
HUNT MARTIN MARTEIRIALS, LLC.,

Appellants

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**DOCKET NUMBER WD69690 Consolidated with WD69787**

DATE: August 11, 2009

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Appeal From:

Circuit Court of Jackson County, MO  
The Honorable Jack Richard Grate, Jr., Judge

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Appellate Judges:

**Division Three**

Harold L. Lowenstein, P.J., Joseph M. Ellis, and Lisa White Hardwick, JJ.

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Attorneys:

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Counsel for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

City of Greenwood, Missouri, Respondent v.  
Martin Marietta Marterials, Inc., and Hunt  
Martin Marterials, LLC., Appellants

**WD69690 Consolidated with WD69787**

**Jackson County**

Before Division Three Judges: Lowenstein, P.J., Ellis, and Hardwick, JJ.

Owners of a limestone quarry appeal the judgment entered in favor of a plaintiff city, after a jury verdict, in the city's action for negligence, public nuisance and declaratory judgment associated with the use of a city street by quarry trucks. The quarry owners assert that the city failed to make a submissible case for negligence, nuisance and punitive damages, that the claims should have been brought as compulsory counterclaims in a pending federal suit, and that a declaratory judgment, finding the city ordinance limiting commercial truck traffic was valid and enforceable, was contrary to law.

**AFFIRMED in all aspects except as to that portion dealing with post-judgment interest. The case is remanded to the trial court for calculation and entry of post judgment interest in accordance with this opinion.**

**Division Three Holds:**

This court finds that the trial court did not err in denying the quarry owners' motions for directed verdict and judgment notwithstanding the verdict as the city sufficiently plead and proved that the quarry controlled the trucks and the trucks' use of the city street was of such extent and duration as to constitute a public nuisance. As the city need only prevail on one tort claim to recover the full measure of compensatory damages, this court does not address claims of error as to negligence. The award of punitive damages was proper as the city sufficiently plead punitive damages and provided sufficient evidence from which the jury could conclude that the quarry willfully and intentionally maintained a nuisance. The trial court's declaratory judgment that the ordinance was valid and enforceable was not error. The tort claims were not compulsory counterclaims to the quarry owners' suit in federal district court.

Opinion by Lowenstein, P. J.

August 11, 2009

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**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**